

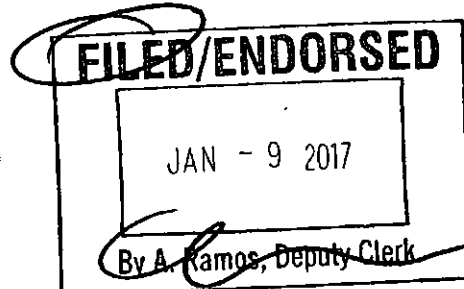
1 John Luebberke, City Attorney – SBN: 164893
CITY OF STOCKTON
2 425 N. El Dorado Street
Stockton, California 95202-1951
3 Telephone: (209) 937-8333

4 Attorneys for Petitioner City of Stockton

5 Jeanne M. Zolezzi – SBN: 121282
Steven A. Herum – SBN: 90462
6 HERUM/CRABTREE/SUNTAG
A California Professional Corporation
7 5757 Pacific Avenue Suite 222
Stockton, California 95207
8 Telephone: (209) 472-7700

9 Attorneys for Petitioner City of Stockton

Exempt from Filing Fees
Pursuant to Government
Code Section 6103



10
11 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SACRAMENTO

13 Coordination Proceeding
Special Title (Rule 3.550),

14 DELTA STEWARDSHIP COUNCIL CASES

15 This document relates to:

16 CITY OF STOCKTON, a California
17 Charter city,

Petitioner,

18
19 v.

20 DELTA STEWARDSHIP COUNCIL, an
independent agency of the State of California,
21 and DOES 1 THROUGH XXX,

Respondent.

22 San Joaquin County Superior Court, Case No.
23 39-2013-00298188-CU-WM-STK

24 STATE WATER CONTRACTORS,
ALAMEDA COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT,
ZONE 7; SAN BERNARDINO VALLEY
26 MUNICIPAL WATER DISTRICT; SANTA
CLARA VALLEY WATER DISTRICT; THE
27 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; MOJAVE
28 WATER AGENCY; ANTELOPE VALLEY-

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4758

Case No. 39-2013-00298188-CU-WM-STK

**ORDER AMENDING JUDGMENT AS
BETWEEN CITY OF STOCKTON AND
DELTA STEWARDSHIP COUNCIL, AND
ENTERING STIPULATED JUDGMENT**

Date Action Filed: June 13, 2013

Date: December 12, 2016

Time: 9:00 a.m.

Judge: Honorable Michael Kenny

Dept.: 31

HERUM/CRABTREE/SUNTAG
ATTORNEYS

1 EAST KERN WATER AGENCY; SAN LUIS
2 & DELTA-MENDOTA WATER
3 AUTHORITY and WESTLAND WATER
DISTRICT,

4 Petitioner-Intervenors.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HERLIH/CRASTREE/SUNTAG
unopposed

1 On November 21, 2016, Petitioner CITY OF STOCKTON ("Moving Party"); filed and
2 served a Motion for Relief from Judgment, to Amend Judgment as to Moving Party and
3 Defendant, and for Entry of Stipulated Judgment (the "Motion").

4 On November 29, 2016, Defendant, Delta Stewardship Council ("DSC"), filed a response
5 in support of the Motion.

6 On December 9, 2016, Petitioner-Interveners State Water Contractors, *et al.*, and San
7 Luis & Delta-Mendota Water Authority, *et al.* (together, "Water Contractor Petitioners"), filed a
8 joint opposition to the Motion.

9 On December 15, 2016, Moving Party filed a reply to Water Contractor Petitioners' joint
10 opposition.

11 The Court reviewed and considered the papers filed in support of and in opposition to the
12 Motion. On December 21, 2016, the Court issued its tentative ruling on the Motion, attached as
13 Exhibit A. No party requested oral argument and the tentative ruling became the Court's final
14 ruling without a hearing.

15 Therefore, for the reasons stated in the Court's tentative ruling,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

17 Moving Party-Petitioner's Motion is GRANTED. The Stipulated Judgment between City
18 of Stockton and DSC, attached as Exhibit B, is hereby approved and entered.

19 IT IS FURTHER ORDERED:

20 The Stipulated Judgment between Moving Party and DSC, attached as Exhibit A, is
21 hereby entered.

22 The judgment entered by this Court on October 21, 2016 (the "Judgment"), is hereby
23 amended as between only Moving Party and DSC to include the Stipulated Judgment as between
24 only Moving Party and DSC.

25 This amendment is strictly limited as to Moving Party and DSC. It leaves the Judgment
26 otherwise effective and unimpaired as to Interveners. It does not affect the judgments, orders, or
27 writs in the other cases associated with Judicial Council Coordinated Proceeding 4758, known as
28 the "Delta Stewardship Council Cases."

1 The Stipulated Judgment shall control any conflict between the Judgment and the
2 Stipulated Judgment as between Moving Party and DSC.

3 IT IS SO ORDERED.

4
5 Dated: _____

The Honorable Michael P. Kenny
Judge of the Superior Court

6
7
8 Dated: December , 2016

Respectfully Submitted,

9
10
11 STEVE HERUM
12 *Attorneys for Petitioner*
City of Stockton

13 Approved as to form:

14 KAMALA D. HARRIS
15 Attorney General of California
16 Deborah M. Smith
Supervising Deputy Attorney General

Date: 12/28/16

17 JEREMY BROWN
18 Deputy Attorney General
19 *Attorneys for Respondents and Defendants*
Delta Stewardship Council

20
21 STATE WATER CONTRACTORS
Stefanie D. Morris, General Counsel

22 BEST BEST & KRIEGER LLP

23
24 CHARITY SCHILLER
25 JENNIFER J. LYNCH
26 *Attorneys for Petitioner-Interveners*
27 *State Water Contractors; Alameda County Flood Control*
and Water Conservation District, Zone 7 and San Bernardino
28 *Valley Municipal Water District*

Date: _____

1 The Stipulated Judgment shall control any conflict between the Judgment and the
2 Stipulated Judgment as between Moving Party and DSC.

3 IT IS SO ORDERED.

4
5 Dated: _____

The Honorable Michael P. Kenny
Judge of the Superior Court

6
7
8 Dated: December , 2016

Respectfully Submitted,

9
10
11 STEVE HERUM
Attorneys for Petitioner
City of Stockton

12
13 Approved as to form:

14 KAMALA D. HARRIS
Attorney General of California
15 Deborah M. Smith
Supervising Deputy Attorney General

Date: _____

16
17 JEREMY BROWN
Deputy Attorney General
18 Attorneys for Respondents and Defendants
Delta Stewardship Council

19
20 STATE WATER CONTRACTORS
21 Stefanie D. Morris, General Counsel

22 BEST BEST & KRIEGER LLP

23 Jennifer J. Lynch
24 CHARITY SCHILLER
JENNIFER J. LYNCH
25 Attorneys for Petitioner-Interveners
26 State Water Contractors; Alameda County Flood Control
27 and Water Conservation District, Zone 7 and San Bernardino
Valley Municipal Water District

Date: 12-29-16

SANTA CLARA VALLEY WATER DISTRICT

Anthony Fulcher

Date: 12/28/16

STANLY YAMAMOTO
ANTHONY T. FULCHER
*Attorneys for Petitioner-Intervener
Santa Clara Valley Water District*

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: _____

MARCIA L. SCULLY
ADAM C. KEAR
ROBERT C. HORTON
*Attorneys for Petitioner-Intervener
The Metropolitan Water District
of Southern California*

BRUNICK, MCELHANEY & KENNEDY

Date: _____

WILLIAM J. BRUNICK
LELAND MCELHANEY
*Attorneys for Petitioner-Interveners
Mojave Water Agency and Antelope
Valley-East Kern Water Agency*

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
a Professional Corporation

Date: _____

DANIEL J. O'HANLON
*Attorneys for Petitioner-Interveners
San Luis & Delta-Mendota Water
Authority and Westlands Water District*

PIONEER LAW GROUP, LLP

Date: _____

ANDREA A. MATARAZZO
JEFFREY K. DORSO
*Attorneys for Petitioner-Intervener
Westlands Water District*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

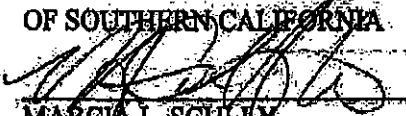
SANTA CLARA VALLEY WATER DISTRICT

Date: _____

STANLY YAMAMOTO
ANTHONY T. FULCHER
Attorneys for Petitioner-Intervener
Santa Clara Valley Water District

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: 12/28/12


MARCIA L. SCULLY
ADAM C. KEAR
ROBERT C. HORTON
Attorneys for Petitioner-Intervener
The Metropolitan Water District
of Southern California

BRUNICK, MCELHANEY & KENNEDY

Date: _____

WILLIAM J. BRUNICK
LELAND MCELHANEY
Attorneys for Petitioner-Interveners
Mojave Water Agency and Antelope
Valley-East Kern Water Agency

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
a Professional Corporation

Date: _____

DANIEL J. O'HANLON
Attorneys for Petitioner-Interveners
San Luis & Delta-Mendota Water
Authority and Westlands Water District

PIONEER LAW GROUP, LLP

Date: _____

ANDREA A. MATARAZZO
JEFFREY K. DORSO
Attorneys for Petitioner-Intervener
Westlands Water District

1 SANTA CLARA VALLEY WATER DISTRICT

2 Date: _____

3 STANLY YAMAMOTO
4 ANTHONY T. FULCHER
5 *Attorneys for Petitioner-Intervener*
6 *Santa Clara Valley Water District*

7 THE METROPOLITAN WATER DISTRICT
8 OF SOUTHERN CALIFORNIA

9 Date: _____

10 MARCIA L. SCULLY
11 ADAM C. KEAR
12 ROBERT C. HORTON
13 *Attorneys for Petitioner-Intervener*
14 *The Metropolitan Water District*
15 *of Southern California*

16 BRUNICK, MCELHANEY & KENNEDY

17 Date: _____

18 WILLIAM J. BRUNICK
19 LELAND MCELHANEY
20 *Attorneys for Petitioner-Interveners*
21 *Mojave Water Agency and Antelope*
22 *Valley-East Kern Water Agency*

23 KRONICK, MOSKOVITZ, TUEDEMANN & GIRARD,
24 a Professional Corporation

25 *Daniel O'Hanlon*
26 DANIEL J. O'HANLON / *by ELL*
27 *Attorneys for Petitioner-Interveners*
28 *San Luis & Delta-Mendota Water*
Authority and Westlands Water District

Date: 12/28/16

PIONEER LAW GROUP, LLP

Date: _____

ANDREA A. MATARAZZO
JEFFREY K. DORSO
Attorneys for Petitioner-Intervener
Westlands Water District

1 SANTA CLARA VALLEY WATER DISTRICT

2 Date: _____

3 STANLY YAMAMOTO
4 ANTHONY T. FULCHER
5 *Attorneys for Petitioner-Intervener*
6 *Santa Clara Valley Water District*

7 THE METROPOLITAN WATER DISTRICT
8 OF SOUTHERN CALIFORNIA

9 Date: _____

10 MARCIA L. SCULLY
11 ADAM C. KEAR
12 ROBERT C. HORTON
13 *Attorneys for Petitioner-Intervener*
14 *The Metropolitan Water District*
15 *of Southern California*

16 BRUNICK, MCELHANEY & KENNEDY

17 Date: _____

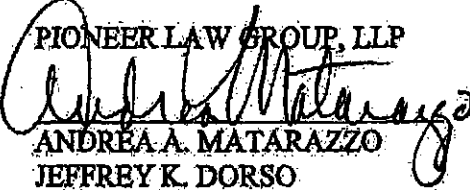
18 WILLIAM J. BRUNICK
19 LELAND MCELHANEY
20 *Attorneys for Petitioner-Interveners*
21 *Mojave Water Agency and Antelope*
22 *Valley-East Kern Water Agency*

23 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
24 a Professional Corporation

25 Date: _____

26 DANIEL J. O'HANLON
27 *Attorneys for Petitioner-Interveners*
28 *San Luis & Delta-Mendota Water*
Authority and Westlands Water District

29 PIONEER LAW GROUP, LLP

30 
31 ANDREA A. MATARAZZO
32 JEFFREY K. DORSO

33 Date: 12/29/16

34 *Attorneys for Petitioner-Intervener*
35 *Westlands Water District*

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME JUDGE	December 22, 2016, 9:00 a.m. HON. MICHAEL KENNY	DEPT. NO CLERK	31 S. LEE
Coordinated Proceeding Special Title DELTA STEWARDSHIP COUNCIL CASES		Coordinated Proceeding JCCP No. 4758	
Nature of Proceedings:		MOTION FOR RELIEF FROM JUDGMENT, TO AMEND JUDGMENT AS TO MOVING PARTY AND DEFENDANT, AND ENTRY OF STIPULATED JUDGMENT	

The following shall constitute the Court's tentative ruling on Petitioner City of Stockton's Motion for Relief from Judgment, which is scheduled on December 22, 2016, at 9:00 a.m. in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other parties of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 10 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the clerk of this Department no later than 4:30 p.m. on the day before the hearing. The fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B); Gov. Code § 68086.) Payment is due at the time of the hearing.

Petitioner moves "the Court for relief from judgment, an amendment as to [Petitioner] in the judgment in *City of Stockton v. Delta Stewardship Council* dated October 21, 2016 ("Judgment"), and for entry of the [Proposed] Stipulated Judgment (the "Stipulated Judgment") between [Petitioner] and Defendant Delta Stewardship Council ("DSC") (collectively, the "Parties")." (Am. Notice of Mot. 2:3-7.) The motion is made on the "ground [that] the Court entered a Judgment that does not reflect the settlement agreement reached between the Parties in the form of a Stipulated Judgment. Before the Parties could file the Stipulated Judgment, the Court entered its Judgment." (*Id.* at 2:8-10.)

Petitioner's motion is GRANTED. In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, counsel for Petitioner is directed to prepare an order granting the motion, incorporating this ruling as an exhibit to the order; submit them to counsel for all parties for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b). Counsel for Petitioner shall also submit to the Court for signature and entry the Parties' Proposed Stipulated Judgment.

EXHIBIT B

1 John Luebberke, City Attorney – SBN: 164893
2 CITY OF STOCKTON
3 425 N. El Dorado Street
4 Stockton, California 95202-1951
5 Telephone: (209) 937-8333

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

6 Attorneys for Petitioner City of Stockton

7 Jeanne M. Zolezzi – SBN: 121282
8 Steven A. Herum – SBN: 90462
9 HERUM\CRABTREE\SUNTAG
10 A California Professional Corporation
11 5757 Pacific Avenue Suite 222
12 Stockton, California 95207
13 Telephone: (209) 472-7700

14 Attorneys for Petitioner City of Stockton

15
16
17
18
19
20
21
22
23
24
25
26
27
28
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

Coordination Proceeding
Special Title (Rule 3.550),

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4758

DELTA STEWARDSHIP COUNCIL CASES

STIPULATED JUDGMENT

Date Action Filed: June 13, 2013

Judge: Honorable Michael Kenny
Dept.: 31

Pursuant to section 664.6 of the Code of Civil Procedure, the Delta Stewardship Council
(Council) and City of Stockton (City) hereby stipulate to the entry of judgment in this matter.

The Council and the City enter into this stipulation in light of the following:

RECITALS

A. On May 16, 2013, the Council adopted the Delta Plan, pursuant to the
Sacramento-San Joaquin Delta Reform Act of 2009 (Act) (Wat. Code, §§ 85000 et seq.).

B. Subsequently, numerous parties filed a total of seven lawsuits challenging the
Council's adoption of the Delta Plan and its implementing regulations. One of those lawsuits
was filed by the City. Specifically, on June 14, 2013, the City filed a Petition for Writ of

1 Mandate challenging the validity of the Delta Plan, the Delta Plan's regulations, and the Delta
2 Plan's Environmental Impact Report.

3 C. The City and the Council have determined that the City's challenges can be fully
4 resolved by documenting the Council's interpretations of one of its regulations, and its
5 interpretation of a statutory provision, as explained in recitals D through H, below. The City and
6 the Council are therefore entering this stipulation in order to document those interpretations.

7 D. Delta Plan Policy 1 ("DP P1," codified as 23 California Code of Regulations
8 section 5010), generally limits new "residential, commercial and industrial development" to
9 specified geographical areas that a general plan, in existence as of May 16, 2013, designated "for
10 residential, commercial and industrial development."

11 E. The City is concerned that DP P1 uses the terms "residential, commercial or
12 industrial development" but that the City's applicable general plan uses different terms for those
13 same types of development. The City wants the Council to make it clear that the Council
14 interprets DP P1's terms as applying to the City's functionally equivalent terms. The City is
15 also concerned that DP P1 could apply to, and potentially prohibit, certain public facilities such
16 as a public waste water treatment facility.

17 F. The Council always assumed that DP P1's use of the terms "residential,
18 commercial or industrial development" applied whether a plan used those precise terms, or
19 functionally equivalent terms. The Council also always assumed that DP P1 does not apply to
20 public facilities such as a public waste water treatment facility.

21 G. The City is concerned that the Council might interpret the term "covered action"
22 in Water Code section 85057.5 as including the City's filing a water rights application with the
23 State Water Resources Control Board, and/or that Board's processing or approving such an
24 application.

25 H. The Council always assumed that the covered action exclusion for "a regulatory
26 action of a state agency" in Water Code section 85057.5, subdivision (b) (1) excludes the actions
27 described in the preceding paragraph (G).
28

1 I. The Council's interpretations fully resolve the City's concerns that the Council's
2 adoption of the Delta Plan and its related actions were potentially inconsistent with the laws
3 outlined in the City's petition and briefs.

4 **THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

5 1. Interpretation of "residential, commercial and industrial" in DP P1. The
6 designations "residential," "commercial," and "industrial" used in DP P1 apply to the City's
7 other functionally equivalent general plan urban-type designations. For example, they apply to
8 the designations, in the City general plan that was in effect on May 16, 2013, of "Village," "Low
9 Density Residential," "Medium Density Residential," "High Density Residential,"
10 "Administrative-Professional," and "Mixed Use." The above does not alter DP P1's limitation
11 of new "residential, commercial, and industrial development" to areas designated for
12 development as of May 16, 2013, as shown in Figure 7-10 of Appendix 7 to the Delta Plan's
13 implementing regulations (23 CCR Appendix 7). (The identical Figure 7-10 can be found in
14 Appendix 7 to the Delta Plan adopted on May 16, 2013.) Functionally equivalent designations
15 are also limited to those areas. For example, a proposed action (see 23 CCR § 5001, subd. (y)
16 for the definition of a "proposed action") in an area designated as "Village" in a City general
17 plan in effect on May 16, 2013, but that as of that date was located outside of the City or its
18 sphere of influence, would be inconsistent with DP P1.

19 2. Application of DP P1 to Public Works. Public works are not "residential,"
20 "commercial" or "industrial." As a result, DP P1 does not apply to any public works projects
21 such as a public waste water treatment facility. These would include the construction, operation,
22 maintenance, repair and replacement of public works improvements pursuant to and consistent
23 with one or more of the plans listed at the end of this paragraph. "Construction" means
24 designing, building or installing pumps, roadways, conveyance facilities and infrastructure,
25 structures and other ancillary public improvements. In contrast, DP P1 applies to any proposed
26 action that involves any new residential, commercial or industrial development (including
27 functionally equivalent development), even if the development is needed to help fund or
28 otherwise support a public works project and/or a listed plan.

- 1 • Water Master Plan (Prepared for City of Stockton by West Yost Associates, Consulting
- 2 Engineers; dated July 2008)
- 3 • 2035 Wastewater Master Plan (Prepared for City of Stockton by West Yost Associates,
- 4 Consulting Engineers; dated October 2008)
- 5 • Regional Wastewater Control Facility Capital Improvement and Energy Management
- 6 Plan (dated August, 2011)
- 7 • Portions of the "City of Stockton FY 2016-2021 Capital Improvement Plan Proposed"
- 8 (dated May 16, 2016 [date appears on page 1 of that document's embedded City
- 9 Manager's Message]) that address Sanitation (P-74 through P-81), Stormwater (P-82
- 10 through P-87) and Water (P-158 through P-168)

11 3. The term "covered action" in Water Code section 85057.5 does not apply to the
12 City's filing a water rights application with the State Water Resources Control Board (SWRCB),
13 and/or the SWRCB's processing or approval of such an application. Those actions are excluded
14 by Water Code section 85057.5, subdivision (b) (1), which excludes "a regulatory action of a
15 state agency." Moreover, SWRCB applications often include details that may point to particular
16 projects. Those details concerning projects do not convert a SWRCB application, or the
17 SWRCB's processing or approval of the application, into a covered action. In contrast, other
18 public agency actions concerning those projects are potentially covered actions. The fact that a
19 project may potentially or actually receive water subject to the SWRCB water right does not
20 exempt non-SWRCB government actions concerning the project from being covered actions.
21 For example, even if a project is described in a SWRCB application and/or approval, a proposed
22 local government grading permit, zoning change or other action for that project is potentially a
23 covered action.

24 4. The parties incorporate into this agreement the interpretation presented by the
25 Trial Court at page 31 line 1 through Page 32 Line 6 of the May 18, 2016 Ruling On Submitted
26 Matter about the Delta Reform Act. A copy of those pages is attached hereto as Exhibit A.

27 5. City's Right. In the event that the Council, the Legislature or a court (in a final
28 decision in which appeals have been exhausted or the time to appeal has expired) alters, rescinds

1 or invalidates one or more provision in paragraphs (1-3), above, by entering this agreement the
2 City does not waive its right to challenge, in a new lawsuit, any such altered measure, or the
3 application of such rescinded or invalidated measure to the City.

4 6. City's and Council's Right. The City and/or the Council may introduce this
5 Stipulated Judgment in any judicial or administrative proceeding in which the Council, or any
6 other entity or individual, asserts that the City has not complied with any of the Council's
7 regulations.

8 7. Fees and Costs. The City and the Council shall assume and pay for their
9 respective attorneys' fees and legal costs and expenses related to this stipulation, and the City's
10 lawsuit against the Council.

11 8. Other Plaintiffs/Petitioners. Except for the City, this judgment does not affect any
12 plaintiffs or petitioners in this Coordinated Proceeding.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: Oct 27, 2016

DELTA STEWARDSHIP COUNCIL

2
3 By Randy Fiorilli
4 Randy Fiorilli, Chair

5 APPROVED AS TO FORM:

6 Bethany Pane
7 Bethany Pane, Acting Chief Counsel

8
9
10 Dated: Dec 13, 2016

CITY OF STOCKTON

11
12 By Kurt Wilson
13 Kurt Wilson, City Manager

14 APPROVED AS TO FORM:

15
16 John Luebbecke
17 John Luebbecke, City Attorney

18
19 GOOD CAUSE APPEARING THEREFORE IT IS SO ORDERED:

20
21 Dated: _____, 2016

22 _____
Judge of the Superior Court

EXHIBIT A
(to Stipulated Judgment)

1 Petitioner's stated concern is that WR P1 permits a Southern-California water supplier to
2 achieve priority in obtaining water. However, the plain language of WR P1 does not affect water
3 right priorities. WR P1 does not provide that if a consistency certification is undergoing the
4 appeals process, another water supplier may come in and usurp the challenged party's water
5 rights or priority. Clearly, Respondent has no authority over water-priority determinations, and
6 any plan or project subject to WR P1 would only be valid to the extent it sought water that a
7 supplier was entitled to via its water rights. Accordingly, the Court finds WR P1 does not alter or
8 affect water rights or priorities.

9 With regard to whether WR P1 affects water right applications, Respondent argues water
10 rights applications are not covered actions pursuant to section 85057.5, subdivision (b)(1):

11 "(b) 'Covered action' does not include any of the following:
12 (1) A regulatory action of a state agency."

13 WR P1 cannot apply to the granting or denial of a water rights application, a matter
14 controlled by the SWRCB (§§ 1250, et seq.). Petitioner argues that the plain language of WR P1
15 could prevent action pursuant to a granted water rights application. While the SWRCB may grant
16 appropriation rights pursuant to section 1253, those rights are still subject to a certification of
17 Delta Plan consistency pursuant to 23 CCR section 5002. However, the requirement of reducing
18 Delta reliance to the extent feasible and cost effective is merely a statutory enumeration of the
19 principle of reasonable use and the public trust doctrine.

20 Section 85023 provides "[t]he longstanding constitutional principle of reasonable use and
21 the public trust doctrine shall be the foundation of state water management policy and are
22 particularly important and applicable to the Delta." Accordingly, the Legislature affirmed its
23 intent that these principles continue to apply to limit an owner's interest in water. (*Alegretti & Co*
24 *v. County of Imperial* 138 Cal.App.4th 1261, 1279 [water rights are restricted to a "reasonable
25 beneficial use" consistent with article X, section 2 of the California Constitution]; *National*
26 *Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 437 ["parties acquiring rights in trust
27 property...can assert no vested right to use those rights in a manner harmful to the trust."]) If an
28

1 in-Delta supplier seeks to exercise its water rights without undertaking locally cost effective and
2 technically feasible projects that reduce reliance on the Delta, such an undertaking is contrary to
3 both the principle of reasonable use and the public trust doctrine. Consequently, WR P1 is an
4 assessment of whether a water supplier is compliant with reasonable use and the public trust
5 doctrine. As such, it does not modify water rights in contravention of the Delta Reform Act or
6 preexisting water rights protections.

7 Conclusion

8 The petition for writ of mandate with regard to the statutory challenges heard in this
9 bifurcated proceeding is **DENIED** in accordance with the above ruling.

10 In accordance with Local Rule 1.06, counsel for Respondent is directed to prepare an
11 order denying the petition, incorporating this ruling as an exhibit to the order, and a separate
12 judgment; submit them to counsel for Petitioner for approval as to form in accordance with Rule
13 of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance
14 with Rule of Court 3.1312(b).

15 *C. Save the California Delta Alliance v. Delta Stewardship Council*

16 Petitioner Save the California Delta Alliance argues the Delta Plan is deficient in the
17 following five areas:

- 18 1. Appendix A and the BDCP Covered Activity Consistency Rule contain unlawful
- 19 underground regulations determining that BDCP projects are exempt from the Delta
- 20 Plan.
- 21 2. The BDCP exemption rule impairs the scope of the Delta Reform Act.
- 22 3. The flow policy violates the Delta Reform Act.
- 23 4. The Delta Plan does not contain any conveyance or storage policies, in violation of the
- 24 Delta Reform Act.
- 25 5. The Council has effectively "rubber-stamped" the BDCP for Delta Plan inclusion,
- 26 contrary to Section 85321.
- 27
- 28

///

///

///

RECEIVED
CIVIL DROP BOX

2017 JAN -5 PM 3:59

GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY